IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

MFA.No. 672 of 1993()

OPMV.853/1989 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT:

JAYAKRISHNAN NAIR T., S/O. LATE GOVINDAN NAIR,
BHAGAVAD PADAM, PUTHOOR, PALGHAT 678001.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.K.LAKSHMANAN PILLAI
SMT.V.P.SEEMANDINI
SRI.M.R.ANISON

RESPONDENTS:
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1. PAUL C. GEORGE, S/O. GEORGE, CHILAMBATH HOUSE,
AMMANCHERRY, MANNANAM KARA, ATHIRAMPUZHA VILLAGE.

2. SABU JOSEPH, VATTOTH HOUSE, KALAKETTY, KANJIRAPPALLY.

3. UNITED INDIA INSURANCE CO. LTD. , PONKUNNAM.

BY ADV. SRI.M.A.GEORGE FOR R3
SRI.CHARLES NELLARI,
SRI SAJI JOSEH THOMAS &
SRI.ABRAHAM P.GEORGE FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 9/03/2007, THE COURT ON 16/3/2007 DELIVERED THE FOLLOWING:

P.R. Raman & Antony Dominic, JJ.
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M.F.A.No. 672 of 1993
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Dated this the 16th day of March, 2007.

JUDGMENT

Antony Dominic,J.

Claimant is the appellant. On 1.2.1989, when the appellant was on his way to Kottayam bus stand after his work and when he reached near Zoolica Automobiles at K.K. Road, Muttampalam, Kottayam,a scooter bearing registration No.KRK 3643 driven by the first respondent in a rash and negligent manner, hit the appellant and he was thrown off the road, sustaining serious injuries. He was taken to the District Hospital, Kottayam and was admitted in the Medical College Hospital, Kottayam, where he was treated as an inpatient from 1.2.1989 till 15.2.1989. He got again admitted at District Hospital, Palakkad and was treated as an inpatient from 2.3.1989 till 13.3.1989. Alleging that the accident occurred due to rash and negligent driving of the scooter by the first respondent of which the second respondent is the owner and the third respondent is the insurer, the petition was filed claiming a total compensation of Rs.1,53,000/-.

2. The Tribunal found that the accident occurred due to the negligence of the first respondent and awarded a total compensation of

Rs.25,050/- together with interest at 12% from the date of petition. It is aggrieved by the said award and claiming enhancement of compensation that this appeal has been filed by the appellant.

3. Although the counsel for the appellant argued extensively in order to impress upon us that the Tribunal adopted a very unrealistic approach and awarded only a meagre compensation, except in respect of the claim for permanent disability and pain and suffering, we are not inclined to disturb the findings of the Tribunal in regard to the other items. In our view, the decision of the Tribunal in respect of the other items of claims is reasonable and based on evidence and does not warrant any interference

4. As far as the permanent disability is concerned, we note that the appellant had claimed compensation of Rs.75,000/-. As we have noted, the appellant was working as a Sales Executive and was earning an income of Rs.2,000/- per month. Ext.A2 is the copy of the accident register-cum-wound certificate , which discloses that the appellant had suffered lacerated wound, 3 x 2 cm. deep on the right parietal region and tenderness back of right hip. Ext.A5 is the medical certificate issued by from Medical College Hospital, Kottayam, which shows that he was admitted in the Hospital on 2.2.1989 and was discharged on 14.2.1989. Ext.A5 also shows the injuries sustained by the appellant.

The appellant had also produced Ext.A10, a medical certificate for physically handicapped issued by the Medical Officer, District Hospital, Palakkad certifying that the appellant had 20% disability of hearing durability when he was examined on 3.7.1990 and the Tribunal has accepted that Ext.A10 is the basic document relied on by the appellant to assess the compensation. However, the Tribunal held that on a scrutiny of the injuries sustained by the appellant, there was no reason to think that the injuries sustained had any relation to the hearing impairment suffered by him. This, in our view, was incorrect. The fact remains is that the appellant had suffered injuries including on the right parietal region and without any material suggesting that the injuries could not have led to the hearing impairment, the Tribunal had no basis for concluding otherwise.

5. We note that the Doctor, who had issued the certificate was not examined and thus, the certificate was not proved as is required in law. In such circumstances, even though the claimant was entitled to be compensated for the permanent disability suffered by him, he could not have been awarded the amount that was claimed by him accepting the certificate produced. Taking into account the fact that he was earning a monthly salary of Rs.2,000/-, that the appellant was a Sales Executive in a private company and in view of the injuries suffered by

him, we feel that a reasonable compensation of Rs.15,000/- should be awarded to the appellant.

6. In respect of pain and suffering, though the appellant had claimed Rs.25,000/-, the Tribunal had awarded only Rs.6,000/- and this, in our view, is unreasonably low. Admittedly, the appellant had suffered serious injuries and was an inpatient in different hospitals and the duration of which was already noted. Taking into account the overall evidence including the medical records, we feel that an additional compensation of Rs.5,000/- should be awarded to the appellant.

7. In the circumstances, we award compensation of Rs.20,000/- to the appellant, in addition to the amount awarded by the Tribunal. The amount of Rs.20,000/- awarded by us will also carry interest at the rate of 7% per annum from the date of presentation of the petition till the date of realisation. The award will stand modified to the above extent.

Appeal is disposed of as above.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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